

SENATE BILL 61

D4, E4

0lr0133

(PRE-FILED)

By: **Chair, Judicial Proceedings Committee (By Request – Departmental – Public Safety and Correctional Services)**

Requested: November 9, 2009

Introduced and read first time: January 13, 2010

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Family Law – Criminal History Records Checks – Employees and Employers**
3 **in Facilities and Other Individuals That Care for or Supervise Children**

4 FOR the purpose of altering the locations at which certain employees, employers, and
5 individuals are required to apply for a certain criminal history records check;
6 altering the facilities that are required to require employees and employers to
7 obtain a criminal history records check; repealing a requirement that certain
8 fingerprints be taken on standard fingerprint cards; altering the State unit
9 authorized to waive a certain fingerprint requirement; altering the conditions
10 under which a certain fingerprint requirement may be waived; repealing a
11 requirement that the Department of Public Safety and Correctional Services
12 mail certain receipts and statements to certain persons and units; altering
13 certain procedures and requirements relating to issuance of certain printed
14 statements; altering the procedure for contesting certain findings in a certain
15 printed statement; defining certain terms; making certain conforming and
16 technical changes; and generally relating to criminal history records checks.

17 BY repealing and reenacting, with amendments,
18 Article – Family Law
19 Section 5–560, 5–561, 5–562, 5–563, 5–564, and 5–565
20 Annotated Code of Maryland
21 (2006 Replacement Volume and 2009 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
23 MARYLAND, That the Laws of Maryland read as follows:

24 **Article – Family Law**

25 5–560.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (a) In this Part VI of this subtitle, the following words have the meanings
2 indicated.

3 (b) “Conviction” means a plea or verdict of guilty or a plea of nolo contendere.

4 (c) “Department” means the Department of Public Safety and Correctional
5 Services.

6 (d) (1) “Employee” means a person that for compensation is employed to
7 work in a facility identified in § 5–561 of this subtitle and who:

8 (i) cares for or supervises children in the facility; or

9 (ii) has access to children who are cared for or supervised in the
10 facility.

11 (2) “Employee” includes a person who:

12 (i) participates in a pool described in subsection (e)(2) of this
13 section;

14 (ii) for compensation will be employed on a substitute or
15 temporary basis to work in a facility identified in § 5–561(b)(1) or (2) of this subtitle;
16 and

17 (iii) will care for or supervise children in the facility or will have
18 access to children who are cared for or supervised in the facility.

19 (3) “Employee” does not include any person employed to work for
20 compensation by the Department of Juvenile Services.

21 (e) (1) “Employer” means an owner, operator, proprietor, or manager of a
22 facility identified in § 5–561 of this subtitle who has frequent contact with children
23 who are cared for or supervised in the facility.

24 (2) For purposes of §§ 5–561(g), 5–563(b)(1), 5–564(a)(2)(i) and (d)(1)(i)
25 and (2), and 5–567 of this subtitle, “employer” includes a child care resource and
26 referral center, an association of registered family day care providers, and an
27 association of licensed child care centers to the extent that the center or association
28 establishes and maintains a pool of individuals who are qualified to work as substitute
29 or temporary employees in a facility identified in § 5–561(b)(1) or (2) of this subtitle.

30 (3) “Employer” does not include a State or local agency responsible for
31 the temporary or permanent placement of children in a facility identified in § 5–561 of
32 this subtitle.

1 **(F) “PRIVATE ENTITY” MEANS A NONGOVERNMENTAL AGENCY,**
2 **ORGANIZATION, OR EMPLOYER.**

3 **[(f)] (G)** “Secretary” means the Secretary of Public Safety and Correctional
4 Services.

5 5–561.

6 (a) Notwithstanding any provision of law to the contrary, an employee and
7 employer in a facility identified in subsection (b) of this section and **[persons]**
8 **INDIVIDUALS** identified in subsection (c) of this section shall apply for a national and
9 State criminal history records check at any designated law enforcement office in this
10 State **OR OTHER LOCATION APPROVED BY THE DEPARTMENT.**

11 (b) The following facilities shall require employees and employers to obtain a
12 criminal history records check under this Part VI of this subtitle:

13 (1) a child care center required to be licensed under Part VII of this
14 subtitle;

15 (2) a family day care home required to be registered under Part V of
16 this subtitle;

17 (3) a child care home required to be licensed under this subtitle or
18 under Title 9 of the Human Services Article;

19 (4) a child care institution required to be licensed under this subtitle
20 or under Title 9 of the Human Services Article;

21 (5) a juvenile detention, correction, or treatment facility provided for
22 in Title 9 of the Human Services Article;

23 (6) a public school as defined in Title 1 of the Education Article;

24 (7) a private or nonpublic school required to report annually to the
25 State Board of Education under Title 2 of the Education Article;

26 (8) a foster care family home or group facility as defined under this
27 subtitle;

28 (9) a recreation center or recreation program operated by **THE State**
29 **[or], A local government, OR A PRIVATE ENTITY** primarily serving minors; **[or]**

30 (10) a day or residential camp, as defined in Title 10, Subtitle 16 of the
31 Code of Maryland Regulations, primarily serving minors; **OR**

1 **(11) A HOME HEALTH AGENCY OR RESIDENTIAL SERVICE AGENCY**
2 **LICENSED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE AND**
3 **AUTHORIZED UNDER TITLE 19 OF THE HEALTH – GENERAL ARTICLE TO**
4 **PROVIDE HOME– OR COMMUNITY–BASED HEALTH SERVICES FOR MINORS.**

5 (c) The following individuals shall obtain a criminal history records check
6 under this Part VI of this subtitle:

7 (1) an individual who is seeking to adopt a child through a child
8 placement agency;

9 (2) an individual who is seeking to become a guardian through a local
10 department;

11 (3) an individual whom the juvenile court appoints as a guardian of a
12 child;

13 (4) an adult relative with whom a child, committed to a local
14 department, is placed by the local department;

15 (5) any adult known by a local department to be residing in:

16 (i) a family day care home required to be registered under this
17 title;

18 (ii) a home of an adult relative of a child with whom the child,
19 committed to a local department, is placed by the local department;

20 (iii) a foster care home or child care home required to be
21 approved under this title;

22 (iv) a home of an individual seeking to adopt a child through a
23 child placement agency; or

24 (v) a home of an individual seeking to become a guardian
25 through a local department; and

26 (6) if requested by a local department:

27 (i) a parent or guardian of a child who is committed to the local
28 department and is or has been placed in an out-of-home placement within the past
29 year; and

30 (ii) any adult known by the local department to be residing in
31 the home of the parent or guardian.

1 (d) An employer at a facility under subsection (b) of this section may require
2 a volunteer at the facility to obtain a criminal history records check under this Part VI
3 of this subtitle.

4 (e) A local department may require a volunteer of that department who
5 works with children to obtain a criminal history records check under this Part VI of
6 this subtitle.

7 (f) An employer at a facility not identified in subsection (b) of this section
8 who employs individuals to work with children may require employees, including
9 volunteers, to obtain a criminal history records check under this Part VI of this
10 subtitle.

11 (g) An employer, as defined in § 5-560(e)(2) of this subtitle, shall require an
12 employee, as defined in § 5-560(d)(2) of this subtitle, to obtain a criminal history
13 records check under this Part VI of this subtitle.

14 (h) (1) Except as provided in paragraph (2) of this subsection, a person
15 who is required to have a criminal history records check under this Part VI of this
16 subtitle shall pay for:

17 (i) the mandatory processing fee required by the Federal
18 Bureau of Investigation for a national criminal history records check;

19 (ii) reasonable administrative costs to the Department, not to
20 exceed 10% of the processing fee; and

21 (iii) the fee authorized under § 10-221(b)(7) of the Criminal
22 Procedure Article for access to Maryland criminal history records.

23 (2) A volunteer under subsection (d), (e), or (f) of this section who
24 volunteers for a program that is registered with the Maryland Mentoring Partnership
25 is not required to pay for costs or fees under paragraph (1)(ii) and (iii) of this
26 subsection.

27 (i) (1) An employer or other party may pay for the costs borne by the
28 employee or other individual under subsection (h) of this section.

29 (2) The local department shall reimburse:

30 (i) an adult residing in a foster care home for the costs borne by
31 the individual under subsection (h) of this section; and

32 (ii) an individual described in subsection (c)(4)(ii) of this section
33 for the costs borne by the individual under subsection (h) of this section.

34 5-562.

1 (a) (1) On or before the 1st day of actual employment, an employee shall
2 apply to the Department for a printed statement.

3 (2) On or before the 1st day of actual operation of a facility identified
4 in § 5–561 of this subtitle, an employer shall apply to the Department for a printed
5 statement.

6 (3) Within 5 days after a local department places a child who is
7 committed to the local department with an adult relative, an individual identified in §
8 5–561(c) or (e) of this subtitle shall apply to the Department for a printed statement.

9 (b) As part of the application for a criminal history records check, the
10 employee, employer, and individual identified in § 5–561(c), (d), (e), or (f) of this
11 subtitle shall submit:

12 (1) except as provided in subsection (c) of this section, a complete set of
13 legible fingerprints [taken on standard fingerprint cards] at any designated State or
14 local law enforcement office in the State or other location approved by the
15 Department;

16 (2) the disclosure statement required under § 5–563 of this subtitle;
17 and

18 (3) payment for the costs of the criminal history records check.

19 (c) The requirement that a complete set of legible fingerprints [taken on
20 standard fingerprint cards] be submitted as part of the application for a criminal
21 history records check may be waived by the Department [of Human Resources] if:

22 (1) the application is submitted by a person who has attempted to
23 have a complete set of fingerprints taken on at least [3] 2 occasions;

24 (2) the taking of a complete set of legible fingerprints is not possible
25 because of a physical or medical condition of the person's fingers or hands;

26 (3) the person submits documentation satisfactory to the Department
27 [of Human Resources] of the requirements of this subsection; and

28 (4) the person submits the other information required for a criminal
29 history records check.

30 5–563.

31 [(a)] As part of the application process for a criminal history records check, the
32 employee, employer, and individual identified in § 5–561(c), (d), (e), or (f) of this
33 subtitle shall complete and sign a sworn statement or affirmation disclosing the
34 existence of a criminal conviction, probation before judgment disposition, not

1 criminally responsible disposition, or pending criminal charges without a final
2 disposition.

3 **[(b) (1) The Department or its designee shall mail an acknowledged receipt**
4 **of the application with a sworn statement or affirmation from an employee to the**
5 **employer within 3 days of the application.]**

6 (2) The Department or its designee shall mail an acknowledged receipt
7 of the application with a sworn statement or affirmation from an employer to the
8 appropriate State or local licensing, registering, approving, or certifying agency,
9 within 3 days of the application.

10 (3) The Department or its designee shall mail an acknowledged receipt
11 of the application with a sworn statement or affirmation from an individual identified
12 in § 5-561(c), (d), (e), or (f) of this subtitle to the appropriate child placement or
13 registering agency or facility.]

14 5-564.

15 (a) (1) (i) The Department shall conduct the criminal history records
16 check and issue the printed statement provided for under this Part VI of this subtitle.

17 (ii) It shall update an initial criminal history records check for
18 an employee, employer, or individual identified in § 5-561(c), (d), (e), or (f) of this
19 subtitle and issue a revised printed statement[, listing any convictions, probation
20 before judgment dispositions, not criminally responsible dispositions, or pending
21 criminal charges occurring in the State after the date of the initial criminal history
22 records check] **IN ACCORDANCE WITH FEDERAL LAW AND REGULATIONS ON**
23 **DISSEMINATION OF FBI IDENTIFICATION RECORDS.**

24 (2) The Department shall adopt regulations requiring:

25 (i) employers to verify periodically the continuing employment
26 of an employee and the continuing assignment of a volunteer;

27 (ii) State or local agencies that license, register, approve, or
28 certify any of the facilities identified in § 5-561(b) of this subtitle to verify periodically
29 the continuing licensure, registration, approval, or certification of a facility or the
30 continuing assignment of individuals identified in § 5-561(e) of this subtitle; and

31 (iii) child placement agencies that place a child as described in §
32 5-561(c) of this subtitle to verify periodically the continuing participation or presence
33 of individuals identified in § 5-561(c) of this subtitle.

34 (3) The employee, employer, volunteer, or other individual identified
35 in § 5-561 of this subtitle is not responsible for payment of any fee to update criminal
36 history records checks.

1 (b) (1) The Department shall provide an initial and a revised statement of
2 the applicant's State criminal record to:

3 (i) the recipients of the [acknowledgments] **PRINTED**
4 **STATEMENT** specified in [§ 5-563(b) of this subtitle] **SUBSECTION (C) OF THIS**
5 **SECTION**; and

6 (ii) the State Department of Education if the applicant is an
7 employee of:

8 1. a child care center that is required to be licensed or to
9 hold a letter of compliance under Part VII of this subtitle; or

10 2. a family day care home that is required to be
11 registered under Part V of this subtitle.

12 (2) The Department shall[:

13 (i) record on a printed statement the existence of a conviction, a
14 probation before judgment disposition, a not criminally responsible disposition, or
15 pending charge reported in the criminal history record information received from the
16 FBI Identification Division; and

17 (ii)] distribute the printed statement in accordance with federal
18 law and regulations on dissemination of FBI identification records.

19 [(c) The recording of the existence of a conviction, a probation before
20 judgment disposition, a not criminally responsible disposition, or pending charge,
21 contained in the criminal history record information received from the FBI
22 Identification Division:

23 (1) may not identify or disclose to a private entity the specific crime or
24 attempted crime in the employee's, employer's, or applicant's criminal history record;
25 and

26 (2) shall disclose to a private entity the existence of a conviction, a
27 probation before judgment disposition, a not criminally responsible disposition, or
28 pending charges for any of the crimes, attempted crimes, or a criminal offense that is
29 equivalent to those enumerated in the regulations adopted by the Department.]

30 [(d)] **(C)** (1) Upon completion of the criminal history records check of an
31 employee, the Department shall submit the printed statement to:

32 (i) the employee's current or prospective employer at the
33 facility or program;

1 (ii) the employee; and

2 (iii) for an employee of a child care center that is required to be
3 licensed or to hold a letter of compliance under Part VII of this subtitle or an employee
4 of a family day care home that is required to be registered under Part V of this
5 subtitle, the State Department of Education.

6 (2) Upon receiving a written request from an employee, the
7 Department shall submit the printed statement to additional employers, if the
8 criminal history records check was completed during the prior 180 days.

9 (3) Upon completion of the criminal history records check of an
10 employer, the Department shall submit the printed statement to:

11 (i) the appropriate State or local agency responsible for the
12 licensure, registration, approval, or certification of the employer's facility; and

13 (ii) the employer.

14 (4) Upon completion of the criminal history records check of an
15 individual identified in § 5-561(c), (d), (e), or (f) of this subtitle, the Department shall
16 submit the printed statement to the appropriate child placement or registering agency.

17 **[(e)] (D)** Information obtained from the Department under this Part VI of
18 this subtitle shall be confidential and may be disseminated only to the individual who
19 is the subject of the criminal history records check and to the participants in the hiring
20 or approval process.

21 **[(f)] (E)** Information obtained from the Department under this Part VI of
22 this subtitle may not:

23 (1) be used for any purpose other than that for which it was
24 disseminated; or

25 (2) be redisseminated.

26 **[(g)] (F)** Information obtained from the Department under this Part VI of
27 this subtitle shall be maintained in a manner to insure the security of the information.

28 5-565.

29 **[(a) In conformity with the following procedures, an] AN** individual may
30 contest the finding of a criminal conviction, a probation before judgment disposition, a
31 not criminally responsible disposition, or pending charge reported in a printed
32 statement **IN ACCORDANCE WITH §§ 10-223 THROUGH 10-228 OF THE CRIMINAL**
33 **PROCEDURE ARTICLE.**

1 [(b) In contesting the finding of a conviction, a probation before judgment
2 disposition, a not criminally responsible disposition, or a pending charge, the
3 individual shall contact the office of the Secretary, or a designee of the Secretary, and
4 a hearing shall be convened within 20 workdays, unless subsequently waived by the
5 individual. The Secretary, or a designee of the Secretary, shall render a decision
6 regarding the appeal within 5 workdays of the hearing.

7 (c) For purposes of this Part VI of this subtitle, the record of a conviction, a
8 probation before judgment disposition, or a not criminally responsible disposition for a
9 crime or a copy thereof certified by the clerk of the court or by a judge of the court in
10 which the conviction or disposition occurred, shall be conclusive evidence of the
11 conviction or disposition. In a case where a pending charge is recorded, documentation
12 provided by a court to the Secretary, or a designee of the Secretary, that a pending
13 charge for a crime which has not been finally adjudicated shall be conclusive evidence
14 of the pending charge.

15 (d) Failure of the individual to appear at the scheduled hearing shall be
16 considered grounds for dismissal of the appeal.]

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 October 1, 2010.